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7 UNITED STATES DISTRICT COURT  
8 FOR THE WESTERN DISTRICT OF WASHINGTON

9 MICHAEL EVITT,

10 Plaintiff,

11 v.

12 WELLS FARGO BANK, N.A.,

13 Defendant.

Case No. 3:23-cv-06121-BHS

ANSWER TO PLAINTIFF'S  
COMPLAINT FOR VIOLATIONS OF  
THE FAIR CREDIT REPORTING ACT

14 Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its attorneys, Snell  
15 & Wilmer L.L.P., hereby responds to Plaintiff's Complaint for Violations of the Fair Credit  
16 Reporting Act dated December 8, 2023 [ECF No. 1] (the "Complaint") as follows:

17 **I. STATEMENT OF THE CASE**

18 Federal Rule of Appellate Procedure 8(d) requires that "[e]ach allegation must be simple,  
19 concise, and direct." Indeed, dismissal on Rule 8 grounds is appropriate where the complaint is  
20 "argumentative" or "prolix." *California Coal. for Fams. & Child. v. San Diego Cnty. Bar Ass'n*,  
21 657 F. App'x 675, 678 (9th Cir. 2016). The Complaint's "Statement of the Case" is, however,  
22 approximately two pages in length and is thus not susceptible to an admission or denial. To the  
23 extent a response is required, Wells Fargo denies any and all wrongdoing. With respect to the  
24 allegations that do not involve Wells Fargo, including statements about Plaintiff, Wells Fargo lacks

25  
26 ANSWER TO PLAINTIFF'S COMPLAINT FOR VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

1 sufficient knowledge or information to respond to the remaining allegations, and therefore denies  
2 the same.

## 3 **II. PARTIES**

4 2.1 In response to Paragraph 2.1 of the Complaint, Wells Fargo lacks sufficient  
5 knowledge or information to respond and therefore denies the same.

6 2.2 In response to Paragraph 2.2 of the Complaint, Wells Fargo admits that Plaintiff  
7 obtained a credit card from Wells Fargo. Wells Fargo lacks sufficient knowledge  
8 or information to respond to the remaining allegations and therefore denies the  
9 same.

10 2.3 In response to Paragraph 2.3 of the Complaint, Paragraph 2.3 calls for a legal  
11 conclusion to which an answer is not necessary nor appropriate. Wells Fargo is  
12 without knowledge or information sufficient to form a belief as to the truth of the  
13 remaining allegations contained in Paragraph 2.3 of the Complaint and therefore  
14 denies the same.

15 2.4 In response to Paragraph 2.4 of the Complaint, Wells Fargo denies that it is a  
16 corporation. Under 28 U.S.C. § 1332(c)(1), Wells Fargo is a citizen of South  
17 Dakota, the state listed on Wells Fargo's organization certificate. *See Wachovia*  
18 *Bank v. Schmidt*, 546 U.S. 303, 307 (2006) ("[A] national bank, for § 1348  
19 purposes, is a citizen of the State in which its main office, as set forth in its articles  
20 of association, is located.").

## 21 **III. JURISDICTION AND VENUE**

22 The Complaint's "Jurisdiction and Venue" section is not a "simple, concise, and direct"  
23 allegation, as Rule 8(d) requires. This section contains numerous and compound allegations, and  
24 is thus not susceptible to an admission or denial. Moreover, this section of the Complaint  
25

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1 references liability to a “Mr. Hermann,” who is not identified as a party. Notwithstanding the  
2 above, Wells Fargo admits that the Complaint purports to assert a claim under federal law, and  
3 thus this Court has subject matter jurisdiction.

#### 4 **IV. FACTS**

5 4.1 In response to Paragraph 4.1 of the Complaint, Wells Fargo objects to the  
6 vagueness, accuracy, and characterization of the allegations, which are in any event  
7 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

8 4.2 In response to Paragraph 4.2 of the Complaint, Wells Fargo objects to the  
9 vagueness, accuracy, and characterization of the allegations, which are in any event  
10 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

11 4.3 In response to Paragraph 4.3 of the Complaint, Wells Fargo objects to the  
12 vagueness, accuracy, and characterization of the allegations, which are in any event  
13 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

14 4.4 In response to Paragraph 4.4 of the Complaint, Wells Fargo objects to the  
15 vagueness, accuracy, and characterization of the allegations, which are in any event  
16 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

17 4.5 In response to Paragraph 4.5 of the Complaint, Wells Fargo objects to the  
18 vagueness, accuracy, and characterization of the allegations, which are in any event  
19 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

20 4.6 In response to Paragraph 4.6 of the Complaint, Wells Fargo objects to the  
21 vagueness, accuracy, and characterization of the allegations, which are in any event  
22 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

23 4.7 In response to Paragraph 4.7 of the Complaint, Wells Fargo objects to the vagueness,  
24 accuracy, and characterization of the allegations, as well as does not indicate what  
25

1 “similar practices” means, which allegations are in any event wholly irrelevant to  
2 Plaintiff’s dispute, and therefore denies.

3 4.8 In response to Paragraph 4.8 of the Complaint, Wells Fargo objects to the  
4 vagueness, accuracy, and characterization of the allegations, which are in any event  
5 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

6 4.9 In response to Paragraph 4.9 of the Complaint, Wells Fargo objects to the  
7 vagueness, accuracy, and characterization of the allegations, which are in any event  
8 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

9 4.10 In response to Paragraph 4.10 of the Complaint, Wells Fargo objects to the  
10 vagueness, accuracy, and characterization of the allegations, which are in any event  
11 wholly irrelevant to Plaintiff’s dispute, and therefore denies.

12 4.11 In response to Paragraph 4.11 of the Complaint, the allegations are too vague to  
13 evaluate, and Wells Fargo therefore denies the same.

14 4.12 In response to Paragraph 4.12 of the Complaint, Wells Fargo denies.

15 4.13 In response to Paragraph 4.13 of the Complaint, Wells Fargo is without knowledge  
16 or information sufficient to form a belief as to the truth of the allegations contained  
17 in Paragraph 4.13 of the Complaint and therefore denies the same.

18 4.14 In response to Paragraph 4.14 of the Complaint, Wells Fargo denies.

19 4.15 In response to Paragraph 4.15 of the Complaint, Wells Fargo denies.

20 4.16 In response to Paragraph 4.16 of the Complaint, Wells Fargo denies.

21 4.17 In response to Paragraph 4.17 of the Complaint, Wells Fargo denies.

22 4.18 In response to Paragraph 4.18 of the Complaint, Wells Fargo lacks sufficient  
23 knowledge or information to respond and therefore denies the same.

24 4.19 In response to Paragraph 4.19 of the Complaint, Wells Fargo lacks sufficient  
25 knowledge or information to respond and therefore denies the same.

- 1       4.20   In response to Paragraph 4.20 of the Complaint, Wells Fargo lacks sufficient  
2           knowledge or information to respond and therefore denies the same.
- 3       4.21   Wells Fargo lacks sufficient knowledge or information to respond and therefore  
4           denies the same.
- 5       4.22   In response to Paragraph 4.22 of the Complaint, Wells Fargo admits that Plaintiff  
6           has a deposit account with Wells Fargo.
- 7       4.23   In response to Paragraph 4.23 of the Complaint, Wells Fargo admits.
- 8       4.24   In response to Paragraph 4.24 of the Complaint, Wells Fargo denies.
- 9       4.25   In response to Paragraph 4.25 of the Complaint, Wells Fargo denies.
- 10      4.26   In response to Paragraph 4.26 of the Complaint, Wells Fargo admits that each of  
11           the transactions was approximately \$999 and denies the remaining allegations.
- 12      4.27   In response to Paragraph 4.27 of the Complaint, Wells Fargo admits that the  
13           transactions totaled just under \$18,000 but denies that the transactions were  
14           unauthorized.
- 15      4.28   In response to Paragraph 4.28 of the Complaint, Wells Fargo admits that overdraft  
16           protection was established on April 28, 2022, but denies that this was unauthorized.
- 17      4.29   In response to Paragraph 4.29 of the Complaint, Wells Fargo objects to the  
18           vagueness of the term “use” and therefore denies.
- 19      4.30   In response to Paragraph 4.30 of the Complaint, Wells Fargo is without knowledge  
20           or information sufficient to form a belief as to the truth of the allegations contained  
21           in Paragraph 4.30 of the Complaint and therefore denies the same.
- 22      4.31   In response to Paragraph 4.31 of the Complaint, Wells Fargo denies.
- 23      4.32   In response to Paragraph 4.32 of the Complaint, Wells Fargo denies.
- 24      4.33   In response to Paragraph 4.33 of the Complaint, Wells Fargo denies.

1       4.34   In response to Paragraph 4.34 of the Complaint, Wells Fargo admits that Plaintiff  
2           reported to Wells Fargo that certain transactions were purportedly unauthorized.

3       4.35   In response to Paragraph 4.35 of the Complaint, Wells Fargo admits.

4       4.36   In response to Paragraph 4.36 of the Complaint, Wells Fargo is without knowledge  
5           or information sufficient to form a belief as to the truth of the allegations contained  
6           in Paragraph 4.36 of the Complaint and therefore denies the same.

7       4.37   In response to Paragraph 4.37 of the Complaint, Wells Fargo denies.

8       4.38   In response to Paragraph 4.38 of the Complaint, Wells Fargo Wells Fargo responds  
9           that the document speaks for itself.

10      4.39   In response to Paragraph 4.39 of the Complaint, Wells Fargo responds that the  
11         document speaks for itself.

12      4.40   In response to Paragraph 4.40 of the Complaint, Wells Fargo responds that the  
13         document speaks for itself.

14      4.41   In response to Paragraph 4.41 of the Complaint, Wells Fargo denies.

15      4.42   In response to Paragraph 4.42 of the Complaint, Wells Fargo cannot meaningfully  
16         respond because the allegation is completely non-specific as to time, and therefore  
17         denies.

18      4.43   In response to Paragraph 4.43 of the Complaint, Wells Fargo is without knowledge  
19         or information sufficient to form a belief as to the truth of the allegations contained  
20         in Paragraph 4.36 of the Complaint and therefore denies the same.

21      4.44   In response to Paragraph 4.44 of the Complaint, Wells Fargo is without knowledge  
22         or information sufficient to form a belief as to the truth of the allegations contained  
23         in Paragraph 4.36 of the Complaint and therefore denies the same.

- 1       4.45   In response to Paragraph 4.45 of the Complaint, Wells Fargo is without knowledge  
2           or information sufficient to form a belief as to the truth of the allegations contained  
3           in Paragraph 4.36 of the Complaint and therefore denies the same.
- 4       4.46   In response to Paragraph 4.46 of the Complaint, Wells Fargo denies.
- 5       4.47   In response to Paragraph 4.47 of the Complaint, Wells Fargo is without knowledge  
6           or information sufficient to form a belief as to the truth of the allegations contained  
7           in Paragraph 4.47 of the Complaint and therefore denies the same.
- 8       4.48   In response to Paragraph 4.48 of the Complaint, Wells Fargo denies.
- 9       4.49   In response to Paragraph 4.49 of the Complaint, Wells Fargo admits.
- 10      4.50   In response to Paragraph 4.50 of the Complaint, Wells Fargo admits that it moved  
11          to enforce the arbitration agreement in the parties' operative agreement.
- 12      4.51   In response to Paragraph 4.51 of the Complaint, Wells Fargo responds that the  
13          "Final Award" speaks for itself, but notes that the Award remains unconfirmed.
- 14      4.52   In response to Paragraph 4.52 of the Complaint, Wells Fargo responds that the  
15          "Final Award" speaks for itself, but notes that the Award remains unconfirmed.
- 16      4.53   In response to Paragraph 4.53 of the Complaint, Wells Fargo responds that the  
17          "Final Award" speaks for itself, but notes that the Award remains unconfirmed.
- 18      4.54   In response to Paragraph 4.54 of the Complaint, Wells Fargo denies.
- 19      4.55   In response to Paragraph 4.55 of the Complaint, Wells Fargo denies.
- 20      4.56   In response to Paragraph 4.56 of the Complaint, Wells Fargo admits that it was  
21          "still credit reporting the account" but denies any wrongdoing.
- 22      4.57   In response to Paragraph 4.57 of the Complaint, Wells Fargo admits based on  
23          Exhibit D.
- 24      4.58   In response to Paragraph 4.58 of the Complaint, Wells Fargo denies.
- 25      4.59   In response to Paragraph 4.59 of the Complaint, Wells Fargo denies.

- 1 4.60 In response to Paragraph 4.60 of the Complaint, Wells Fargo denies.
- 2 4.61 In response to Paragraph 4.61 of the Complaint, Wells Fargo denies.
- 3 4.62 In response to Paragraph 4.62 of the Complaint, Wells Fargo is without knowledge
- 4 or information sufficient to form a belief as to the truth of the allegations contained
- 5 in Paragraph 4.36 of the Complaint and therefore denies the same.
- 6 4.63 In response to Paragraph 4.63 of the Complaint, Wells Fargo denies.
- 7 4.64 In response to Paragraph 4.64 of the Complaint, Wells Fargo denies.
- 8 4.65 In response to Paragraph 4.65 of the Complaint, Wells Fargo denies.
- 9 4.66 In response to Paragraph 4.66 of the Complaint, Wells Fargo denies.
- 10 4.67 In response to Paragraph 4.67 of the Complaint, Wells Fargo denies.
- 11 4.68 In response to Paragraph 4.68 of the Complaint, Wells Fargo denies.
- 12 4.69 In response to Paragraph 4.69 of the Complaint, Wells Fargo denies.

13 **V. FIRST CAUSE OF ACTION**

14 **(Federal Fair Credit Reporting Act Violation)**

15 **(15 U.S.C. § 1681-s-2(b))**

16 **(Wells Fargo)**

- 17 5.1 In response to Paragraph 5.1 of the Complaint, Wells Fargo incorporates its
- 18 responses above.
- 19 5.2 In response to Paragraph 5.2 of the Complaint, Wells Fargo denies.
- 20 5.3 In response to Paragraph 5.3 of the Complaint, Wells Fargo denies.
- 21 5.4 In response to Paragraph 5.4 of the Complaint, Wells Fargo objects to vagueness
- 22 of term “erroneous account” and denies.
- 23 5.5 In response to Paragraph 5.5 of the Complaint, Wells Fargo admits.
- 24 5.6 In response to Paragraph 5.6 of the Complaint, Wells Fargo denies, and notes that
- 25 the Final Award is unconfirmed.



- 1       5.7     In response to Paragraph 5.7 of the Complaint, Wells Fargo denies.
- 2       5.8     In response to Paragraph 5.8 of the Complaint, Wells Fargo denies.
- 3       5.9     In response to Paragraph 5.9 of the Complaint, Wells Fargo denies.
- 4       5.10    In response to Paragraph 5.10 of the Complaint, Wells Fargo responds that Exhibit
- 5           E speaks for itself, but notes that Exhibit E appears to be a TransUnion document,
- 6           and is not a document issued or created by Wells Fargo.
- 7       5.11    In response to Paragraph 5.11 of the Complaint, Wells Fargo objects to vagueness
- 8           of term “erroneous account” and denies.
- 9       5.12    In response to Paragraph 5.12 of the Complaint, Paragraph 5.12 asserts a legal
- 10           standard from a Pennsylvania case, and thus a response is not necessary or
- 11           appropriate. Plaintiff’s Complaint cannot establish the applicable legal standards
- 12           in his Complaint, particularly by citing foreign authority.
- 13       5.13    In response to Paragraph 5.13 of the Complaint, Wells Fargo denies.
- 14       5.14    In response to Paragraph 5.14 of the Complaint, Wells Fargo denies.
- 15       5.15    In response to Paragraph 5.15 of the Complaint, Wells Fargo denies.
- 16       5.16    In response to Paragraph 5.16 of the Complaint, Wells Fargo denies.
- 17       5.17    In response to Paragraph 5.17 of the Complaint, Wells Fargo denies.

18                           **VI. PRAYER FOR RELIEF**

19       Wells Fargo requests that Plaintiff’s Complaint be dismissed with prejudice, and that

20   Plaintiff take nothing thereby.

21                           **AFFIRMATIVE DEFENSES**

22       As separate, alternative, and affirmative defenses to the Complaint, Wells Fargo alleges:

- 23       1.     The Complaint fails to state a claim against Wells Fargo upon which relief can be
- 24   granted.

1           2.     Plaintiff has no private right of action against Wells Fargo for its initial furnishing  
2 of information to a credit reporting agency. 15 U.S.C. § 1681s-2(c), (d).

3           3.     Wells Fargo's duty to investigate Plaintiff's credit dispute is only triggered upon  
4 receiving notice of the dispute from the credit reporting agency. 15 U.S.C. § 1681s-2(b)(1).

5           4.     To the extent Wells Fargo received notification of Plaintiff's dispute, Wells  
6 Fargo's responses to credit reporting agency disputes were timely, accurate, and complete.

7           5.     At all relevant times, Wells Fargo had in place reasonable and appropriate  
8 procedures to investigate and verify any and all credit information it was allegedly furnishing.

9           6.     Wells Fargo's investigations were reasonable under the circumstances and  
10 conducted in good faith.

11          7.     Plaintiff's claims may be barred by the applicable statute of limitations and/or  
12 doctrine of laches. 15 U.S.C. § 1681p.

13          8.     Plaintiff cannot prove Wells Fargo violated FCRA, knew it was violating FCRA,  
14 or acted with reckless disregard as to whether it was violating FCRA.

15          9.     Plaintiff cannot establish any actual damages, including credit denial or monetary  
16 damages, with reasonable certainty.

17          10.    Plaintiff failed to mitigate his damages.

18          11.    Some or all of Plaintiff's damages, if any, may have been caused by the acts,  
19 omissions, and/or errors of Plaintiff and/or others. Thus, any damages are barred or reduced by  
20 the contributory and comparative negligence of Plaintiff or others.

21          12.    Plaintiff's Complaint does not allege facts sufficient to rise to the level of conduct  
22 required to recover punitive damages, and thus all requests for punitive damages are improper.

23          13.    Plaintiff lacks standing because Plaintiff suffered no injury in fact.

24          14.    Wells Fargo reserves all defenses under Fed. R. Civ. P. 8 and 12, and any  
25 additional defenses and avoidances that may apply through discovery or otherwise.

26 ANSWER TO PLAINTIFF'S COMPLAINT FOR VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

1 WHEREFORE, having fully defended, Wells Fargo requests the following relief:

2 A. That Plaintiff's Complaint be dismissed with prejudice, and that Plaintiff take  
3 nothing thereby;

4 B. That Wells Fargo be awarded its costs and attorneys' fees pursuant to 15 U.S.C.  
5 §§ 1681n(c) and 1681o(b), and otherwise as allowed by law, in defending this action; and

6 C. For such other and further relief as the Court deems just and proper.  
7  
8

9 Dated: January 5, 2024

SNELL & WILMER L.L.P.

10  
11 By: /s/ Kelly H. Dove

12 Kelly H. Dove, WSBA No. 58910  
13 *Attorneys for Wells Fargo Bank, N.A.*  
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ANSWER TO PLAINTIFF'S COMPLAINT FOR VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this date, I electronically filed the foregoing **ANSWER TO**  
3 **PLAINTIFF'S COMPLAINT FOR VIOLATIONS OF THE FAIR CREDIT REPORTING**  
4 **ACT** with the Clerk of the Court for the U. S. District Court, Western District of Washington by  
5 using the Court's CM/ECF system. Participants in the case who are registered CM/ECF users will  
6 be served by the CM/ECF system.

7 DATED: January 5, 2024.

8  
9 /s/ Maricris Williams  
10 An employee of Snell & Wilmer L.L.P.

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